

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT SUTO,	)	
Petitioner,	)	
	)	Civil Action No. 2:09-617
v.	)	
	)	Senior District Judge Donetta W. Ambrose/
DAVID PITKINS, THE DISTRICT	)	Magistrate Judge Robert C. Mitchell
ATTORNEY OF THE COUNTY OF	)	
BEAVER and THE ATTORNEY	)	
GENERAL OF THE STATE OF	)	
PENNSYLVANIA,	)	
Respondents.	)	

**MEMORANDUM ORDER**

DONETTA W. AMBROSE, United States Senior District Judge.

Presently before the Court is Petitioner Robert Suto's Motion to Amend/Correct his Petition for Writ of Habeas Corpus. [ECF No. 21]. Petitioner's Motion to Amend/Correct his Petition for Writ of Habeas Corpus is construed as a Motion for Relief of Judgment pursuant to Federal Rule of Civil Procedure 60(b) and is denied.

On July 17, 2009, the Magistrate Judge recommended that petitioner's habeas corpus petition be dismissed and that a certificate of appealability be denied. Petitioner was served with a copy of the Report and Recommendation and was granted until August 3, 2009 to submit objections thereto. After Petitioner was granted an extension of time to submit his objections, he submitted his objections on August 27, 2009. *See* Obj. [ECF No. 14]. On September 8, 2009, this Court dismissed Petitioner's habeas corpus petition, denied a certificate of appealability, adopted the Report and Recommendation as the opinion of the Court and informed Petitioner as to his appellate rights. *See* Memo. Order [ECF No. 15]. Petitioner filed an appeal on September 22, 2009, docketed at United States Court of Appeals for the Third Circuit Case Number 09-3768. *See* Notice of Appeal [ECF No. 17]. On January 7, 2010, the Court of Appeals denied

Petitioner's certificate of appealability for Petitioner's failure to show "a substantial showing of the denial of a constitutional right[.]" and for Petitioner's failure to show "that reasonable jurists would debate the District Court's disposition of his case." *See* Order of the Court of Appeals 09-3768 [ECF No. 20] (citations omitted).

Four years later, on May 16, 2014, Petitioner submitted to this court a Motion to Amend/Correct his Petition for Writ of Habeas Corpus. [ECF No. 21]. The Magistrate Judge denied the motion, and Petitioner appealed. *See* Order of 5/19/2014; Notice of Appeal [ECF No. 23]. The Court of Appeals for the Third Circuit dismissed Petitioner's appeal for lack of appellate jurisdiction, construing his Motion to Amend/Correct his Petition for Writ of Habeas Corpus as one under Federal Rule of Civil Procedure 60(b) and construing the Magistrate Judge's denial of Petitioner's motion as a recommendation to this Court and advising Petitioner to file objections to this Court. *See* Order of the Court of Appeals, 14-3067 [ECF No. 25]. Petitioner thereafter filed Objections which are the subject of this Memorandum Order. *See* Obj. [ECF No. 26].

Federal Rule of Civil Procedure 60(b) permits a party to seek relief from a final judgment for mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, the judgment is void, the judgment has been satisfied, or for any other reason that justifies relief. Fed. R. Civ. P. 60(b). A Motion for Relief of Judgment under Rule 60(b) "must be made . . . no more than a year after the entry of the judgment or order on the date of the proceeding[.]" or within a reasonable amount of time after the entry of judgment. Fed. R. Civ. P. 60(c). The decision to allow relief pursuant to Rule 60(b) lies in the "sound discretion of the trial court guided by accepted legal principles applied in light of all of the relevant circumstances." *Ross v. Meagan*, 638 F.2d 646, 648 (3d Cir. 1981).


Petitioner's Motion to Amend/Correct his Petition for Writ of Habeas Corpus has been construed as one for Relief of Judgment under Federal Rule of Civil Procedure 60(b) by the Court of Appeals and will be done so here. *See* Order of the Court of Appeals, 14-3067 [ECF No. 25]. After a thorough review of the record, Petitioner does not provide any tenable grounds for relief under Rule 60(b). Thus, the Court concludes that Petitioner's Motion to Amend/Correct Petition for Writ of Habeas Corpus, construed as a Rule 60(b) motion, is denied.

An appropriate Order follows.

AND NOW, this 23<sup>rd</sup> day of September, 2015, Petitioner's Motion to Amend/Correct his Petition for Writ of Habeas Corpus [ECF No. 21], IT IS HEREBY ORDERED as follows:

Petitioner's Motion to Amend/Correct his Petition for Writ of Habeas Corpus is construed as a Motion for Relief of Judgment pursuant to Federal Rule of Civil Procedure 60(b) and is DENIED. IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure if the Petitioner desires to appeal from this Order he must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed. R. App. P.

By the Court,



Donetta W. Ambrose

United States Senior District Judge

cc: Honorable Robert C. Mitchell  
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